



Our Ref: JC: MAP 2009

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5 February 2009

Federal Court Branch  
Australian Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

via fax: 08 6250 5904



**FAXED**

5/2/09 3.30pm

Dear Sir/Madam

**Re: Future Governance Options for Federal Family Law Courts in Australia**

The Law Society of NSW commends the Government for commissioning the examination of the services provided by federal courts in the delivery of family law services. It also commends the work done in that examination and welcomes the release of the Report prepared by Des Semple and Associates entitled Review of Future Governance Options for Federal Family Courts in Australia ("the Report").

In response to the Government's invitation for submissions, the following comments have been prepared by the Law Society's Family Issues Committee ("the Committee"):

**1 The proposed new structure of Federal Family Courts**

The Law Society strongly agrees the best option for the future structure for the delivery of the optimal family law services is to have a single Court, with a centralised management/administration, with two levels of Judicial Divisions (Superior/Appellate and General) as proposed in the Report.

The Committee agrees the proposed structure will provide the maximum efficiency in the delivery of services and the administration of the Court and will solve many of the logistical difficulties that have existed since the inception of the Federal Magistrates Court ("FMC") in 2000.

The Committee also agrees that the proposed transitional provisions in respect of the FMC and the Federal Magistrates already appointed should be adopted, thereby making the adoption of the Report's main proposals achievable. The offer of dual commissions is also supported for those Federal Magistrates where it is appropriate.

Whilst the Committee's comments relate primarily to the family law jurisdiction, it similarly supports the recommendations of the Report in respect of the devolution of that part of the FMC that focuses on general Federal law work. The Committee believes the "transfer" of the general law work to the Federal Court allows a degree of specialisation that is required in the practice of law at the federal level and will facilitate better expertise in both Courts.



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In summary therefore, the adoption of the proposed future structure, referred to in Annexure G to the Report is supported.

The members of the Family Issues Committee also support the (implied) proposed adoption of the title of the new court to be The Family Court of Australia.

## **2 The role of a single administrative and corporate structure**

The recommendation there be a single support and administrative structure is endorsed. Legal practitioners have regularly commented on the problems encountered with the dual system that has applied to date and the rejection of such a dual system as a model is welcomed.

## **3 The role of the Appellate/Superior Division of the Court**

The proposed structure is welcomed however it is difficult to see the rationale that the appropriate number of Judges in this Division should be "around 25" (page 9). It is noted there are presently 46 Judges of the Family Court (Para 74, and footnote 33) and these Judges are already performing the roles that would be required of them in the new Superior Division. It is already the practice that those Judges are doing the appellate and more complex cases (acknowledging the difficulty the Courts have had defining the meaning of "complex", referred to in Part 5). Noting the introduction of de facto cases, the growth of Magellan and increasing number of international child abduction matters, the workload will not decrease even with the merger of the Courts and indeed could increase as it is recognised that much of the work undertaken presently in the FMC should properly be done within the Superior Division.

Therefore, while the exact number of Judges to be appointed in the Superior Division is not a specific recommendation in the Report, the Committee urges the Government to ensure that both Divisions are properly resourced and that the focus on the General Division is not allowed to detract from the performance of the Superior Division, which will be the one primarily responsible for the interpretation and development of the Court's jurisprudence.

## **4 The role of the General Division of the Court**

The members of the Law Society practising in this jurisdiction, including the members of the Family Issues Committee of the Law Society, also support the assertion the FMC has its own "can-do" service culture that should be preserved as much as possible; it is very pleasing that the Report recognises this and is at pains to ensure that this continues.

That the FMC has its culture embedded in its Rules and Case Management procedures is also acknowledged. The Committee supports the continuation of that Court's Rules as the model for the operation of the General Division.

The Committee would also support a review of the Family Court Rules for use in the Superior Division, with consideration being given to the adoption of the more effective FMC Rules as a model wherever possible.

The title of persons offered commissions in the General Division is a matter for discussion, but the Committee urges the Government to acknowledge the importance of this Division with the word "Judge" in some fashion e.g. District

Family Law Judge or the like. Such a title would reflect the acknowledgement of government of the importance of that role. This submission is in accordance with others made during the enquiry (para 115).

It is noted the author of the Report (page 6) records at present the two Courts are "handling largely the same work"; this is also the experience of legal practitioners working in this area.

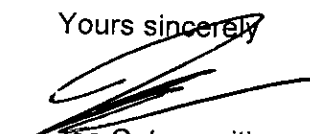
As the role of the judicial officer of the General Division will be critical to the success of the new Court (and the delivery of services to the public), it is imperative that the right persons be attracted to that position. The remuneration and conditions of the judicial officers of the two Divisions should be brought closer together (better still, the differences eliminated) to ensure that proper candidates can be attracted; and to ensure that those persons are commensurately rewarded for the functions performed. It is submitted that the difference between the salary and conditions (including superannuation and leave entitlements) presently existing between Family Court Judges and Federal Magistrates cannot be justified.

## 5 Other matters

- The Report also adverts to the role of the FMC at the moment in performing most of the circuit work. In terms of the principles of access to justice, the Committee considers this to be a very important issue and it is submitted that circuits should be recognised specifically within the rules of Court and that circuits should be properly funded (perhaps, separately funded) to ensure the delivery of cost effective services to regional and rural areas.
- Two Judicial Registrars remain in the Family Court; this position (as well possibly as the single remaining SES Band 2 Registrar) might be considered anomalous in the new structure and consideration to their positions should be given. Presumably the position-descriptions of those roles will be subsumed into the work done in the General Division.
- The importance of the role of the Registrars (properly) has not been a focus of the Report, but in re-examining the roles of the various judicial officers, consideration to the roles that Registrars can and do play in the areas of dispute resolution and case management should not be overlooked. Considerable saving can be made to the Court if many of the functions now done by Judges or Federal Magistrates can be properly done by Registrars, thereby releasing significant Judge-time to the Court.

I trust these comments are of assistance. For anything further please contact Maryanne Plastiras, Responsible Legal Officer for the Family Issues Committee on 9926 0212 or [map@lawsocnsw.asn.au](mailto:map@lawsocnsw.asn.au)

Yours sincerely



Joe Catanzariti  
President